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master his conversion of them is larceny. *Holbrook v. State* (1894) 107 Ala. 154, 18 So. 109. But it is not larceny for a servant to convert goods delivered to him by a third person for his master, provided he does so before he becomes a mere custodian. *Commonwealth v. King* (Mass. 1852) 9 Cush. 284. A Texas statute providing that property may be alleged in either the general or special owner has been peculiarly interpreted to mean that the property must be laid in the one having the actual care, control and management. See *Frazier v. State* (1885) 18 Tex. App. 424, 442. So while the instant case is sound under the Texas law, it would not be under the law of most states.

CRIMINAL LAW—NEW TRIAL—INCOMPETENCE OF ATTORNEY.—At the trial at which the defendant was convicted, evidence favorable to him was not introduced because of the apparent lack of ability of his counsel. On appeal, *held*, the inconclusiveness of the evidence together with the incompetence of the counsel was sufficient grounds for a new trial. *People v. Schulman* (Ill. 1921) 132 N. E. 530.

New trials in criminal cases should be granted only where the substantial rights of the accused have been so violated as to make it reasonably clear that a fair trial was not had. See *State v. Nelson* (1903) 91 Minn. 143, 145, 97 N. W. 652. Where the evidence presented was insufficient to warrant the conviction a new trial is granted. *People v. Freeman* (1910) 244 Ill. 590, 91 N. E. 708. Within the discretion of the court, newly discovered evidence is sufficient justification for a new trial. *Saylors v. State* (1911) 9 Ga. App. 227, 70 S. E. 975. But where the evidence could have been discovered or presented by usual diligence on the part of a defendant's attorney a new trial is refused. *White v. State* (1906) 98 S. W. 264; *Edwards v. Territory* (1904) 8 Ariz. 342, 76 Pac. 458; *Lyons v. State* (1912) 6 Okla. Cr. 581, 120 Pac. 665. The incompetence of the defendant's attorney is not sufficient basis for a reversal. Thus in the jurisdiction of the principal case the court refused to reverse a conviction of murder for the alleged incompetence of defendant's counsel in offering no proof of defendant's good character and in not asking for instructions on self-defense and accidental homicide. *People v. Barnes* (1915) 270 Ill. 574, 110 N. E. 881; *accord, Edwards v. Territory, supra*. The inconclusive nature of the evidence in the principal case may have been sufficient ground for the decision; but it is difficult to see how the incompetence of defendant's attorney was material.

INFANTS—RESCISSION OF EXECUTED CONTRACT—BENEFITS RECEIVED THEREUNDER.—The plaintiff, an infant, representing he was an adult purchased an automobile, paying part of the contract price. After using it for five months he sued to recover the money paid. *Held*, dismissing complaint, that since the benefit that the plaintiff derived exceeded the sum paid, he could not recover. *Sparandera v. Staten Island Garage* (Mun. Ct. 1921) 66 N. Y. L. J. 52, *aff'd* (Sup. Ct. App. T. 1921) 66 N. Y. L. J. 32.

It was recently held that when an infant disaffirms an executed contract for the purchase of stock and seeks to recover money paid by him to the broker under the contract, the plea that the infant had fraudulently misrepresented his age, is good. *Falk v. McMasters* (1921) 197 App. Div. 357, 188 N. Y. Supp. 795; see (1922) 22 COLUMBIA LAW REV. 78. Since, according to the New York decisions the infant derives no benefit from such a stock transaction, the plaintiff there would probably have recovered if the theory of the defense was the benefit accruing to the infant under the contract. *Mordecai v. Pearl* (N. Y. 1892) 63 Hun. 553, 18 N. Y. Supp. 543, *aff'd* 136 N. Y. 625, 32 N. E. 1014; *cf. Pierce v. Alexander* (1902) 36 Misc. 870. Even in the absence of misrepresentation, infants have been denied recovery of money paid on executed contracts, because the benefits